

Contract # 069077

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:
Department: Transportation Agency Code: 810 Division: UDOT, referred to as (STATE), and the following CONTRACTOR:

Vaisala Inc.

Name

P.O. Box 8500-53423

Address

Philadelphia

PA

19178-3423

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Stephanie Haynes Phone #612-727-1084 Email shaynes@clh.netFederal Tax ID# 042731916 Vendor #92094A C Commodity Code #90911000000

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
Maintenance services of State of Utah owned navigational aids for UDOT.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX# 810 66000000027, FY2006, Bid#DR6080.
- 4.
5. CONTRACT PERIOD: Effective date: 1 November 2005 Termination date: 31 October 2007 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options: two (2) one-year renewal options.
6. CONTRACT COSTS: This is a Requirements Contract. Prices are listed in ATTACHMENT C: Pricing.
7. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Pricing
ATTACHMENT D: Special Terms and Conditions.
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DR6080 dated 10/12/05.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE

Cheri L. Haynes 12/13/05
Contractor's signature Date

Kevin S. Hansen 12 Dec 05
Agency's signature Date

Cheri L. Haynes, President
Type or Print Name and Title

[Signature] JAN 03 2006
Director, Division of Purchasing Date

CONTRACT RECEIVED AND
PROCESSED BY
[Signature] JAN - 6 2006
Director, Division of Finance

Paul Rottmann	801-965-4078	801-965-4073	prottmann@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email

(Revision 09/30/2003)

REC'D JAN 11 2006

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ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
 1. Nonperformance of contractual requirements;
 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following:
 1. Exercise any remedy provided by law;
 2. Terminate this contract and any related contracts or portions thereof;
 3. Impose liquidated damages, if liquidated damages are listed in the contract;
 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be:
 1. State Standard Terms and Conditions;
 2. State Additional Terms and Conditions;
 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

ATTACHMENT B: SCOPE OF WORK
MAINTENANCE SERVICES OF STATE OWNED NAVIGATIONAL AIDS

1. Purpose

This document is intended to describe required maintenance services of State owned, Aviation Navigation Equipment. Makes and Models of Equipment are listed in Attachment C: Pricing. The types of equipment are as follows:

AWOS - Automated Weather Observation System.

2 Services: In General all services shall be performed in accordance with F.A.A. Order 6700.20A for NON-FEDERAL NAVIGATIONAL AIDS AND AIR TRAFFIC CONTROL FACILITIES.

2.1 Scheduled monthly services and adjustments:

The Contractor shall perform those routine tests and adjustments required by 14 CFR Part 171 for non-federal airports, record results in the station log and submit results to the Federal Aviation Administration (FAA) with one (1) copy of each report to STATE.

2.2 Restoration of equipment after an unscheduled outage.

- 2.2.1 Response time following an unscheduled outage shall average forty-eight (48) hours or less.
- 2.2.2 The State shall, at its expense, maintain an inventory of serviceable spare parts.
- 2.2.3 The Contractor shall use parts from the State's inventory unless directed otherwise by the State Representative.
- 2.2.4 If parts are not available in the States inventory, The Contractor shall provide parts at cost to the State. All parts provided by the Contractor shall meet current FAA standards.
- 2.2.4 State shall pay for and direct the repair and/or disposition of equipment of all unserviceable equipment. State may, at its sole discretion, assign the Contractor to accomplish repairs of unserviceable equipment. A firm price quote shall be provided to the State and approval given by the State prior to start of repairs.

3 Testing After Services

- 3.1 If requested by the State, the Contractor shall attend scheduled FAA site visits and/or flight inspections required by the FAA.
- 3.2 Test equipment shall be provided, maintained, calibrated and inventoried by the State.

ATTACHMENT C: PRICING
Navigational Aid Maintenance Contract

1. Pricing for Monthly Scheduled Maintenance (Includes per diem and all travel to and from the site being serviced.)

- 1.4 Blanding, Utah

AWOS-3 Model: (Vaisala) \$235.00 _____ per month

- 1.5 Brigham City, Utah

AWOS-3 Model: Vaisala \$235.00 _____ per month

- 1.6 Delta, Utah

AWOS-3 Model: Vaisala \$235.00 _____ per month

2. Unscheduled Service

- 2.1 Price per day per person as required by the State (to be billed in half ($\frac{1}{2}$) day increments). \$ included in above pricing

- 2.2 **Premium added to price listed in 2.1** if travel or service(s) are required by the State on New Year's Eve, New Year's Day, Memorial Day, July 4th, Thanksgiving Day or Christmas Day. \$ included in above pricing.

3. Other Repairs

Repairs for outages caused by weather, acts of God, vandalism, or other damages caused by humans, moving of any equipment related to the AWOS, or other construction related damage. \$ included in above pricing; plus reimbursement for parts, materials and travel expenses associated with these repairs.

**ATTACHMENT C
SPECIAL TERMS AND CONDITIONS**

1. **COMPLETE CONTRACT**

This contract is intended by the parties as a final expression of their agreement, and supersedes all prior communications, representations and agreement, oral and written, between the parties with respect to the subject matter contained herein. The parties also intend this contract to be a complete and exclusive statement of the terms of their agreement. This contract may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding on the STATE unless in writing, signed by a duly authorized representative of the STATE.

2. **CONTRACTOR NOT AN AGENT**

CONTRACTOR, including its agents and employees, is an independent CONTRACTOR and not an agent or employee of the STATE. CONTRACTOR is NOT authorized to represent and STATE expressly disclaims any liability resulting from such misrepresentation.

3. **ACCEPTANCE OF GOODS NOT A WAIVER**

The acceptance of goods described in this contract shall not constitute a waiver of any right of action that the STATE may have for breach of warranty or any other cause.

4. **PRICING**

The Contractor agrees that the initial prices bid on materials/services in this contract shall be guaranteed for two (2) years.

ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR ONE YEAR, AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY SUCH REQUEST MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON ANY PRICING IN THIS CONTRACT SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

5. **WAGES**

The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.

6. **INVOICING**

THE CONTRACT NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE.

The Contractor shall submit invoices to:
Utah Department of Transportation
Aeronautics Division
135 North 2400 West
Salt Lake City, Utah 84116

The State will remit payment by mail. The State reserves the right to adjust incorrect invoices.

ATTACHMENT C
Page 2
SPECIAL TERMS AND CONDITIONS

7. **NON-ASSIGNMENT**

The Contractor shall not sublet, assign or transfer any part of the contract without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.

8. **NON-COMPETE CLAUSE**

The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflict, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide 90 day prior notice to the Contractor.

9. **PERFORMANCE BOND**

The State requires a performance bond in the amount of ten percent (10%) of the total estimated annual amount of the contract. A cashier's check may be substituted for the bond. The cashier's check will be cashed and funds held until the contract expires.

10. **INSURANCE**

Prior to commencing work the Contractor shall provide the State with proof of insurance. The insurance policy shall provide coverage to the Contractor for bodily injury and property damage arising from the Contractor's negligent execution of the instructions, duties, obligations and projects assigned to it by the State. Liability and Property Damage Insurance Policy shall be \$1,000,000 aggregate minimum. The Contractor shall provide a Certificate of Insurance for each time period of this contract.

The Contractor shall provide adequate Fire and Comprehensive Insurance to cover the value of and the loss of use of the aircraft and other equipment used to fulfill the obligations of this contract.

All insurance coverage provided by the Contractor shall name the State of Utah, UDOT and its employees as additional insureds.

11. **AUTHORIZATION TO USE SERVICES**

The use of the services herein described shall be authorized and requested **only** by the Utah Director of Aeronautics or his authorized Representative.